

FIRST REGULAR SESSION

# HOUSE BILL NO. 319

96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FISHER.

1095L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, and to enact in lieu thereof eight new sections relating to public contracts.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, are  
2 repealed and eight new sections enacted in lieu thereof, to be known as sections 34.203, 34.206,  
3 34.207, 34.209, 34.212, 34.216, 34.217, and 34.218, to read as follows:

34.203. The provisions of sections 34.203 to [34.216] **34.218** shall be known and may  
2 be cited as the "Fairness in Public Construction Act".

34.206. The purpose of sections 34.203 to [34.216] **34.218** is to fulfill the state's  
2 proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and  
3 efficient expenditures of public funds in connection with publicly funded or assisted construction  
4 projects. Nothing in sections 34.203 to [34.216] **34.218** shall prohibit employers or other parties  
5 covered by the National Labor Relations Act from entering into agreements or engaging in any  
6 other activity arguably protected by law, nor shall any aspect of sections 34.203 to [34.216]  
7 **34.218** be interpreted in such a way as to interfere with the labor relations of parties covered by  
8 the National Labor Relations Act.

**34.207. As used in this chapter, the term "public funds" shall mean those funds  
2 belonging to the state, any agency of the state, or any instrumentality or political  
3 subdivision thereof.**

34.209. **Except as provided in section 34.216**, the state, any agency of the state, or any  
2 instrumentality **or political subdivision** thereof, when engaged in procuring or letting contracts  
3 for construction of a project that is funded [by greater than fifty percent of state funds] **in any**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 **amount with public funds**, shall ensure that bid specification, project agreements, and other  
5 controlling documents entered into, required, or subject to approval by the state, agency, [or]  
6 instrumentality, **or political subdivision** do not:

7 (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or  
8 adhere to agreements with one or more labor organizations on the same or related projects; or

9 (2) Discriminate against bidders, offerors, contractors, or subcontractors for entering or  
10 refusing to enter or to remain signatory or otherwise adhere to agreements with one or more labor  
11 organizations on the same or related construction projects.

34.212. 1. The state, any agency of the state, or any instrumentality, **or political**  
2 **subdivision** thereof shall not issue grants or enter into cooperative agreements for construction  
3 projects, a condition of which requires that bid specifications, project agreements, or other  
4 controlling documents pertaining to the grant or cooperative agreement contain any of the  
5 elements specified in section 34.209.

6 2. The state, any agency of the state, or any instrumentality, **or political subdivision**  
7 thereof shall exercise such authority as may be required to preclude a grant recipient or party to  
8 a cooperative agreement from imposing any of the elements specified in section 34.209 in  
9 connection with any grant or cooperative agreement awarded or entered into. Nothing in sections  
10 34.203 to [34.216] **34.218** shall prohibit contractors or subcontractors from voluntarily entering  
11 into agreements described in section 34.209.

34.216. 1. For purposes of this section, the term "project labor agreement" shall be  
2 defined as a [multiemployer, multiunion] pre-hire agreement **by or between an employer and**  
3 **one or more labor union** designed to systemize labor relations at a construction site that is  
4 required by the state, **any agency of the state**, or [a] **any instrumentality, or** political  
5 subdivision [of the state] **thereof** as a condition of [a] bid specification, **bid submission, or**  
6 **contract award** for a construction project, thereby insuring that [all] contractors and  
7 subcontractors on a project comply with the terms of a union-only agreement. **The term**  
8 **"agreement" shall include any arrangement, written or otherwise communicated, whether**  
9 **explicit or implicit in nature.**

10 2. The state, **any agency of the state, or any instrumentality**, or [a] political  
11 subdivision [of the state may] **thereof shall not** enter into **or require** a union-only project labor  
12 agreement for the procurement of construction services[, except as provided in section 34.209,  
13 on a project-by-project basis only if the project is funded fifty percent or less with state funds and  
14 only on the condition that:

15 (1) The state or political subdivision must analyze the impact of a union-only project  
16 labor agreement and consider:

17 (a) Whether the union-only project labor agreement advances the interests of the public  
18 entity and its citizens;

19 (b) Whether the union-only project labor agreement is appropriate considering the  
20 complexity, size, cost impact, and need for efficiency on the project;

21 (c) Whether the union-only project labor agreement impacts the availability of a qualified  
22 work force; and

23 (d) Whether the scope of the union-only project labor agreement has a business  
24 justification for the project as bid;

25 (2) The state or political subdivision shall publish the findings of subdivision (1) of this  
26 subsection in a document titled "Intent to Enter Into a Union Project Labor Agreement". The  
27 document shall establish a rational basis upon which the state or political subdivision bases its  
28 intent to require a union-only project labor agreement for the project;

29 (3) No fewer than fourteen days but not more than thirty days following publication of  
30 the notice of a public hearing, the state or political subdivision shall conduct a public hearing on  
31 whether to proceed with its intent to require a union-only project labor agreement;

32 (4) Within thirty days of the public hearing set forth in subdivision (3) of this subsection,  
33 the state or political subdivision shall publish its determination on whether or not to require a  
34 union-only project labor agreement.

35 3. (1) Any interested party may, within thirty days of the determination of the state or  
36 political subdivision as set forth in subdivision (4) of subsection 2 of this section, appeal to the  
37 labor and industrial relations commission for a determination as to whether the state or political  
38 subdivision complied with subsection 2 of this section for a union-only project labor agreement  
39 as defined in subsection 1 of this section.

40 (2) The labor and industrial relations commission shall consider the appeal in  
41 subdivision (1) of this section under a rational basis standard of review.

42 (3) The labor and industrial relations commission shall hold a hearing on the appeal  
43 within sixty days of the filing of the appeal. The commission shall issue its decision within  
44 ninety days of the filing date of the appeal.

45 (4) Any aggrieved party from the labor and industrial relations commission decision set  
46 forth in subdivision (3) of this subsection may file an appeal with the circuit court of Cole  
47 County within thirty days of the commission's decision].

34.217. [Notwithstanding the provisions of section 1.140, the provisions of sections  
2 290.095 and 290.250 and sections 34.203 to 34.216 shall not be severable. In the event a court  
3 of competent jurisdiction rules that any part of this act is unenforceable, the entire act shall be  
4 rendered null and void.] **Any person submitting a bid, or who would have submitted a bid**  
5 **except for violations of this chapter, shall have standing to seek equitable relief and**

6 **monetary damages in a court of competent jurisdiction for monetary losses resulting from**  
7 **violations of this chapter, including but not limited to, setting aside award of a contract,**  
8 **ordering a contract to be rebid, requiring award of a contract to a different bidder than**  
9 **originally awarded, awarding monetary damages deemed appropriate by the court,**  
10 **including award of reasonable attorney's fees, or awarding a combination of such forms**  
11 **or relief.**

**34.218. Notwithstanding the provisions of section 1.140, the provisions of sections**  
2 **34.203 to 34.217 shall not be severable. In the event a court of competent jurisdiction rules**  
3 **that any part of this act is unenforceable, the entire act shall be rendered null and void.**